Consultation Response

Changes to the regulatory framework for abstraction and impounding licensing in England

Moving into the Environmental Permitting Regulations regime Consultation

Date: 16 December 2021

Consultation Background

The EA is consulting on moving abstraction and impoundment licencing into the Environmental Permitting Regulations (EPR). This change affects anyone in England who holds one of the following licences or may apply for a new one in the future: abstraction licences, groundwater investigation consents, or impoundment licences.

Currently, abstraction and impoundment licencing are covered by the Water Resources Act 1991. Reform to the abstraction and impoundment licencing regime has been planned since the Natural Environment White Paper in 2011. The Abstraction Plan published in 2017 proposed that the regime is modernised by combining into the EPR.

What do the reforms aim to achieve?

The overall aims of moving abstraction and impoundment licencing into the EPR are to prevent inconsistency between environmental regulations, address unsustainable abstraction and build a stronger catchment focus.

What are the Environmental Permitting Regulations?

Environmental Permits are used to regulate facilities that could harm the environment or human health. EPR covers facilities previously regulated under a range of other, separate legislation and it has also been used to transpose many EU Directives into domestic law. The purpose of the EPR is to bring potentially harmful facilities together under a single, streamlined environmental permitting and compliance framework to make it easier for businesses and regulators to manage compliance. Currently, there are 12 regulated facilities within EPR. These are largely industry based, including waste (e.g., carriers and operators permits), and mobile plant, but also cover activities such as flood risk activity and ground and surface water discharges.

What is proposed?

Under current plans, following implementation in 2023, all existing Abstraction and Impoundment licences will automatically become ‘transitional permits’ (no reissue of documentation, changes to conditions or additional requirements). Non-time limited licences can theoretically remain in a transitory state indefinitely. However, when certain variations are applied for, or when time limited licences reach their end date, these ‘transitional permits’ will become EPR permits, and all

rights/conditions related to this regime will come into force. Any new applications, or applications which are in process, will be dealt with under the EPR and issued as permits.

Some of the key changes proposed are:

- Requirement for the permit holder to meet the legal definition of the operator under the EPR.
- EPR permits will not retain compensation rights (note: transitory permits will retain these).
- Requirement for an Environment Management System (EMS).
- Permits would not be time limited, but instead would be subject to periodic and individual reviews from the regulator.
- Multiple activities taking place on the same site can be regulated on a single permit.

These items are explained further within the response to the consultation questions and proposals below.

Introduction

The Country Land and Business Association (CLA) is the membership organisation for owners of land, property and businesses in rural England and Wales. We help safeguard the interests of landowners, and those with an economic, social and environmental interest in rural land. Our members own or manage around half the rural land in England and Wales and more than 250 different types of businesses.

Agriculture and private water supplies were one per cent of abstractions (by volume) in England 2000-2017 according to 2019 Defra statistics. Despite the small amount of water taken, farmers and land managers hold 69 per cent of total water abstraction licences.

The CLA is supportive of increasing flexibility within the abstraction system and developing a stronger catchment focus. However, it is pivotal that any reforms recognise the need for water for agriculture throughout the process and retain compensation rights. A flexible abstraction licencing system should allow for sharing and trading of water resources, allowing for collaboration between licence holders and innovation. The current proposal to move abstraction licensing into the EPR will make innovation to support sustainable water use more difficult, due to increased complexity and costs.

Key Points

- Water for crops and livestock must be included as an essential use of water when supplies are limited.
- Stakeholder engagement on the temporary trade process is required to ensure the operator responsibility can be lawfully passed to a third party without additional burden.
- Current exempt activities must be allowed to continue under EPR without the requirement to register with the EA (e.g., abstracting up to 20m3 per day without a licence/permit).
- Breaches or issues with a single point/activity in a multi-point/activity permit must be dealt with in isolation to protect other users and business activities.
- The frequency of periodic permit review needs to take into account large-scale long-term investments which may have been made (e.g., reservoirs).

- Compensation rights should be retained under EPR permits, as abstraction rights are important business assets and property rights.

Consultation Questions

Proposal 1- Existing abstraction and impounding licences transitioning into the Environmental Permitting Regulations

Q1. Do you agree with the transitional arrangement proposals for licences transitioning into the Environmental Permitting Regulations?

The CLA **does not agree** with the proposed triggers for a transitional permit becoming an EPR permit. A transitional permit which was previously a time-limited licence should become an EPR permit only at the date it would have been due for renewal.

The issue of when a transitional permit becomes an EPR permit is particularly sensitive for the proposal that the 'operator' (licence / permit holder) should have to meet the definition of the operator under the Environmental Permitting Regulations. As the consultation notes, there are many scenarios where the operator as listed on the (transitional) permit is not the person carrying out the abstraction activity. In such instances, it may be complex to ensure that the appropriate legal agreements are in place to allow the operator definition to be met and associated risk and responsibility properly traded. See answer to Q8 for more detail.

The proposal as stated will stifle innovation, by making it unattractive to vary or transfer a permit, due to the loss of transitional rights and additional conditions which will have to be met. Therefore, it is not conducive to a flexible abstraction system, as required to adapt to the challenges of a changing climate and water availability.

The CLA **supports** the proposal that the existing conditions in the licence will remain the same and that no additional conditions will be imposed upon transitional permits. The CLA agrees that there should be no re-issue of documentation, which would be an unnecessary administrative burden on both licence holders and the Environment Agency (and therefore the taxpayer); that compensation rights should be retained by transitional permits; and that there should be no upper time limit for a licence to remain in a transitional state.

The EA has explained to the CLA that licence holders who have both an underlying licence of right and an additional capacity on a time-limited licence would have more than one transitional permit under the proposals, which will only be amalgamated at the request of the permit holder, allowing licences of right to retain transitional rights. The CLA is supportive of this.

Q2. Do you agree with the proposed approach to transitional (in progress) appeals, transitional (in progress) appeal periods and in progress enforcement?

The CLA **disagrees** with the proposal to determine transitional (in progress) applications and appeals, including applications for surrender, transfer, apportionment, vesting and applicant led variations, which are in progress and have not been determined by the Environmental Permitting Regulations implementation date, under the EPR.

Currently, there are significant delays to the processing of new abstraction and impoundment licences and appeals, partially as a result of the changes to exemptions (New Authorisations) in 2018. For example, new authorisations which were submitted two years ago have still not been determined. Applicants should not be penalised by these delays.

Transitional (in progress) applications and appeals should be dealt with under the transitional arrangements and be issued as transitional permits, which retain the rights and conditions as under the existing licencing regime. The user should not be penalised for administrative delays on the part of the regulator which may impact the viability of their business activities. Only applications and appeals submitted after the implementation date should be dealt with under the EPR.

Proposal 2 - Groundwater investigation consents transitioning into the Environmental Permitting Regulations

Q3. Do you agree with the proposed approach to groundwater investigation consents transitioning into the Environmental Permitting Regulations?

The CLA **disagrees** that in progress applications should be determined under EPR and therefore subject to additional conditions, as in response to question 2.

The CLA **agrees** that the Groundwater Investigation Consents that are live on the date of transition should remain valid until they expire, avoiding confusion and administrative burden.

Proposal 3 – Transitional abstraction permits with a time limit

Q4. Do you agree with the proposed approach to transitional abstraction permits with a time limit?

The CLA disagrees with the proposed approach. There must be some flexibility with regards to the licence holder being required to meet the definition of the operator. As noted in the consultation documents, landowners, who are likely to be named on existing licences, may not meet the definition of the operator where a third party is undertaking the activity on their land. To meet this definition, they may have to implement a temporary trade. Clear guidance on how the landowner can meet this definition and the controls required must be issued in advance, and the arrangements must work, before the operator condition can be reasonably applied. See Q8 for more detail.

Proposal 4 - Previously exempt abstractions (New Authorisations)

Proposal 5 – Abstraction and impounding activities under the Environmental Permitting Regulations

Q5. Do you agree with the proposed water abstraction and water impounding activities?

The CLA agrees that current definitions and requirements for water abstraction and water impounding activities be brought across.

Q6. Do you agree with the proposal to introduce a groundwater investigation abstraction activity under the Environmental Permitting Regulations thereby requiring a permit for this activity rather than continuing with the current approach of issuing a consent?

The CLA **tentatively agrees** that as part of the transition into EPR, groundwater investigations become a new type of abstraction activity, on the basis of the limited detail provided. This tentative agreement is conditional on the costs associated with the application being recoverable if the investigation determines that there is not sufficient water.

Q7. Do you agree with the proposal to further categorise abstraction activities as set out above?

The CLA is unsure on this proposal. It is unclear from the document how sub-categories within the activities will work. While the broad categories of activity listed correspond to the current licence types, it is unclear how the abstraction activities will be broken down further (e.g., by use).

Under current licencing, seasonality is used as a proxy for flow. This may not be appropriate with climate change moving forwards. Greater flexibility between summer and winter usage should be allowed. We are increasingly seeing the effects of climate change on weather patterns, with periods of above average rainfall followed by dry periods, and flooding occurs in catchments where there may be deemed to be no additional water abstraction capacity for sustainability reasons. The abstraction activities need to be flexible to this 'new normal'. The new activities should allow for larger proportions of water to be abstracted at higher flow rates. The activities should allow for water to be taken in periods of high rainfall, for example, siphoned into a reservoir, for use in dry periods. This would help to build resilience against flooding and drought. For example, removing water from washlands into water storage infrastructure which will be utilised/released during dry (low flow) periods.

Proposal 6 – Operator and permit holder

Q8. Do you agree with the proposal to maintain, for transitional permits only, the ability for a person who is not the permit holder to lawfully carry out an abstraction under a permit with the permit holder's permission?

The CLA **strongly agrees** that for transitional permits, a person who is not the permit holder must be able to carry out an abstraction under a permit with the permit holder's permission. A landowner may have an agreement with a third party (e.g., a farming tenant) to take part in abstraction activities under a licence held by the landowner, and therefore we wish to see these permissions to continue to allow third party use.

However, when the transitional permits become EPR permits, the CLA understands that the permit holder will have to tick a box to confirm that they are the operator, and that any legal action with regard to, for example, a permit breach, would always be taken against the operator. The CLA understands that the only way to pass the 'operator' responsibility to a third party is via trade of a permit to the third-party abstractor for a distinct time period at a set volume. Under the current trading scenarios, this could require multiple 'part, temporary trades' each season, involving application to the EA. **From the consultation documents it is not clear how this will work or if there will be processing fees each time.** This process needs to be flexible, simple, clear, and not incur additional costs. The CLA is concerned that the guidance on trades must be updated

and tested to ensure this process works in practice, before the requirement for the permit holder to meet the definition of the operator is enforced. Permits may have multiple abstraction points with multiple third-party users. In agricultural applications, operations will span sites, therefore a single third party may need to have trades with multiple permit holders. One example is a vegetable grower using parts of c.40 permit holders' abstraction allowances. These agreements may repeat annually, or on a rotation after a set period of years. Therefore, the regulations will need to allow temporary trades to cover a period each year every X years, or the same period annually. This is only one example, and further consultation, guidance and discussion are necessary before the operator definition can be implemented.

Proposal 7 – Content and Form of a Permit

Q9. Do you agree with our proposal to adopt the Environmental Permitting Regulations provision relating to offsite permit conditions for abstraction and impounding applications?

The consultation document notes that this is a 'rarely used regulation' therefore the CLA **disagrees** that this should be brought in as a new requirement for abstractions and impoundments. Agreements for offsite works should remain between the licence holder and third party. Permit conditions should not be imposed, as these may disincentivise collaboration.

Q10. Do you agree with the proposal to adopt the Environmental Permitting Regulations permit types, exclusions and exemptions for abstraction and impounding?

It is vitally important for those reliant on private water supplies, in particular from boreholes, that the existing exemption for abstracting up to 20 m3 per day remains in place. Rural properties which are not served by mains water are reliant on such supplies and mains water pressure is often insufficient to reach or adequately service certain areas of a land holding. The CLA understands that there is no intention to remove this exemption as part of this proposal and that treating it, and others, as an 'exclusion' under the EPR will mean that no new requirements are placed on those using such supplies. **The CLA agrees that activities which are currently exempt from licencing should not have to be registered with the EA under the EPR, and therefore supports these becoming exclusions under EPR.**

Q11. Are there any abstraction or impounding situations that you think could satisfy the standard rules permit format?

The CLA is not aware of any such activities, however, the provision should remain that standard rules permits could be created at a later date, as these may be simpler and less expensive than bespoke permits.

Q12. Do you agree with the proposal to include an EMS requirement in all new Environmental Permitting Regulations permits for a water abstraction or water impounding activity?

The CLA tentatively agrees with the Environmental Monitoring System (EMS) requirement, provided sufficient guidance is issued and the **expectation of the EMS is proportionate to the activity undertaken**. This could otherwise be unreasonable paperwork and cost for individuals,

or those with smaller operations. For example, the same expectation should not be applied to small and large business, who may have significantly differing resource.

The requirements of the EMS content should be consistent with requirements of existing schemes which the operator may be committed to, such as LEAF and Red Tractor, ensuring that a duplication of effort does not take place.

Given that the operator in many cases may be a landowner who is not undertaking the abstraction or impoundment activity, the EMS should be allowed to be written by the person(s) carrying out the activity. Under the current proposals, one operator (permit holder) may have multiple abstraction points and activities being managed by multiple people/businesses, therefore, it should be possible for there to be multiple EMSs. Both of the following scenarios outlined should be allowed, depending on what the permit holder / operator / third party agree:

- User of multiple abstraction points under different operators should be able to implement one EMS for all the points which they use, covering multiple different sites.
- Permit holder with multiple third-party users should be able to provide one EMS which all users have to abide by.

Proposal 8 – Site and source of supply

Q13. Do you agree with the proposal to set out the principles to help determine the extent of a site within guidance?

The CLA **agrees** with the broad principles set out although it should be noted that ‘proximity’ and ‘reasonable area’ will be much larger with abstraction and impoundment activities than other activities under EPR, for example, a waste installation. Therefore, the CLA believes it is critical that applicants can decide if they wish for their activities under different regimes to be consolidated under one permit or not. The CLA understands this is how the proposal will work.

Q14. What do you think that the principles should be to help determine the extent of a site within guidance?

The inclusion of land ownership. If there is one landowner, or a collection working as a cooperative, this could influence if the area is considered as one site.

Q15. Do you agree with the proposal to allow abstraction from more than one source of supply on a single permit?

In line with a catchment-based approach to water resources, the CLA **agrees** with the proposal to allow abstraction from more than one source of supply on a single permit, **subject to how this is treated with permit review and breaches or issues with single points in a multi-point permit.** An issue with one abstraction or impoundment point must be dealt with in isolation and not result in the suspension or termination of the overall permit. This is important because there may be many distinct activities occurring under one permit. There are likely to be multiple abstraction points and multiple third-party users. A situation with one user should not negatively impact the other third-party users. The CLA understands from the EA that breaches / issues are intended to be dealt with in isolation.

Q16. Are there any circumstances where you think that abstraction activities for the same operation or site, but from different sources of supply, should not be on the same permit?

Only if the applicant requests to have them on separate permits. Depending on the detail of the trade of permit process, there may be situations where it is simpler to have separate permits.

<u>Proposal 9 – Variations, transfers, revocations and surrenders</u>

Q17. Do you agree with the proposal to adopt the Environmental Permitting Regulations provisions for the transfer (or partial transfer) of a permit for water abstraction or water impounding activity to be actioned upon the receipt of a joint application?

Agree. However, this application should not be onerous. It is important that the low level of licence holder burden is retained and therefore we support the suggestion that the EA should have a deemed acceptance policy.

<u>Proposal 10 – Appeals</u>
<u>Proposal 11 – Permit Review Process</u>

Q18. Do you agree with the two types of review? If not, why?

The CLA **disagrees** with the proposed review types. While we support the aim of the review process to ensure sustainable abstraction in principle, **the proposed review process presents extreme risk for any businesses reliant on an abstracted water supply** for their activities. Ultimately, more flexibility and certainty of supply are required to be built into the proposed review process.

Under the periodic review proposal, the consultation proposes that water availability in catchments will be reviewed every six years, with six years' warning before any changes are imposed to permit holders. Under this model, a business has six years to adapt, at which point they may be subjected to further changes, as it will be time for the permit to be reviewed again. While the CLA is **supportive of the time lag to allow businesses to adapt**, the reviews, and therefore potential changes, happening every six years are not sustainable from an economic perspective. Agricultural businesses which are reliant on water to underpin their activities **cannot invest in innovation and improvement across any part of their business without security of water supply**.

Historically, reviews for certain uses have been further apart than six yearly. For example, winter storage reservoirs and other infrastructure can require investment of hundreds of thousands of pounds (sometimes over a million pounds) and involve long planning processes (sometimes lasting several years). This **large-scale long-term investment, which is critical to build resilience to flooding and drought, is not possible if the permit can be reviewed so frequently**. Water storage investment requires security of supply of around 20-25 years. The CLA propose that such use classes should have a minimum review period of 18 years (for consistency with catchment end dates), allowing for the 6-year notice of change.

The CLA is unclear how the first the periodic review will be triggered. It is suggested that the periodic reviews may be in line with the Abstraction Licensing Strategy (ALS) catchment common end dates. The CLA notes that the move into EPR is proposed to take place in 2023 and that the

next common end dates are between 2025 and 2030. This suggests that after a minimum of two years on the new regime (and maximum of seven years) all permits will be reviewed. In these cases, a six-year warning will be grossly insufficient. **There should be a minimum length of time after a permit is issued before it can be reviewed. The current review proposal is too frequent and reduces certainty of access to secure water supplies for land managers.**

Individual reviews in particular pose a threat to rural businesses. The ability for the EA to complete ad hoc reviews could make farms unviable, with knock on effects on land values and therefore the ability to secure finance. There is no mention that permit holders will receive the same six years advance warning as with periodic reviews. Such reviews prioritise short-term, reactive action over long-term strategic action. Cuts or revocation of permits under such reviews could cause businesses to fail in the short-term, when longer-term there is a solution to the water availability issue (for example, in line with plans being developed by local Water Resources groups).

Example scenarios for a licence granted in 2021:

- Under a periodic review, in line with catchment common end dates this could be reviewed in 2025 and changes would come into effect in 2031.
- Under an individual review, this could be reviewed at any time from 2023, with changes coming into effect immediately.

Assuming the licensable activity was entered into based on a 20-year investment period, neither scenario is viable, with the supply possibly being cut off between 2 and 10 years into the activity.

With the permit reviews, it is important to recognise that **past usage is not an indication of future requirement**, particularly with changing climate and a growing population. Therefore, reducing quantities on the basis that the upper limit has not been reached is not a sustainable way to operate. Many licences have an element of rotational use, for example, where an operator is allowing an agricultural tenant to grow a crop once every few years, there will be several years without usage.

Q19. Do you think there should be any other review type? If so, what?

The CLA is not supportive of the permit review proposal. See answer to Q18.

Q20. How should the frequency of permit reviews be decided?

The CLA is not supportive of the frequency of the proposed review types. See answer to Q18.

<u>Proposal 12 – Enforcement and suspension</u>

Q21. Do you agree with the proposal to adopt the Environmental Permitting Regulations enforcement and suspension notices for abstraction and impounding activities?

The CLA **does not support** the introduction of suspension notices for agricultural and nursery uses, which will create uncertainty of supply for these users. Periods of ‘prolonged low flows’ are likely to become increasingly frequent over coming years due to climate change. There needs to be a clear definition of what constitutes a ‘period of prolonged low flow’ and a consideration of the business impacts. For example, if a nursery has their permit suspended and cannot water the plants, the entire inventory may be lost. Similarly for arable farming this could result in significant

loss of crops. The suspension of permits also poses risk for animal welfare. Interruption to permits in this way may cause businesses to fail. It is not reasonable to require a business to continue to pay subsistence charges for the duration of the period that the activity is suspended, causing additional financial burden. Prior to issuing a suspension notice where there is a risk of environmental harm, all other options available should be explored, such as only irrigating at night. See answer to Q22 for further discussion on risk of environmental harm.

Q22. Do you agree with the proposal to use the term 'harm to the environment' and the definition proposed?

The CLA disagrees with the definition proposed. The definition of harm to the environment is currently very broad and needs to be balanced with the need for efficient sustainable food production. Therefore, while we are supportive of the need to protect the environment within the regulation, we feel that we need clarity on the modelling used for future / risk of harm before we can determine that we agree with the definition. The CLA is unsure if there is sufficient quality and quantity of data to accurately determine risk of harm or to appreciate the nuances between different areas. Without detail on the modelling and underlying data being available, it is not possible for land managing operators to properly challenge enforcement and suspension notices or to understand why they are being prevented from abstracting. The evidence base for the impacts of low water flow must be clear and there must be sufficient communication to abstractors. It is complex to determine that the abstraction is the cause of the harm to the environment and unfair to penalise land manager operators when this is not proven. The CLA is unsure how the regulator is determining that the harm is the result of a specific activity. Greater access to local hydrological data is needed.

Q23. Do you think there should be any additional points included in the definition?

The definition needs to caveat the effects on businesses and animal welfare. For example, under current regulation (Section 57 of the Water Resources Act) there are activities which are excluded from having restrictions implemented, such as water used to supply pot grown plants which are unable to take moisture from the soil. There needs to be some refinement of the definition to balance the risk of environmental harm with the risk of harm to the activities which the abstraction is supporting (for example, security of food supply and keeping potted plants alive). **Water for crops and livestock should be included as an essential use of water.**

Q24. Do you agree with the proposal to move the two existing notices for unlicensed impounding works into the Environmental Permitting Regulations?

No opinion.

Q25. Do you agree with the proposal to retain and bring across only fixed monetary penalties, variable monetary penalties and third-party undertakings in relation to variable monetary penalties?

Disagree.

The CLA believe the EPR should retain the requirement that before serving a notice the 'Environment Agency must be satisfied beyond reasonable doubt that the person has committed

the offence' and the requirement to serve a "notice of intent" before a final compliance/restoration notice.

The CLA is concerned that there is no right to compensation for suspension notices as there would be for stop notices 'where a person has suffered loss as a result of the service of the stop notice or refusal of a completion certificate where to do so in either case is found to have been unreasonable'.

Proposal 13 – Offences and Penalties

Q26. Do you agree with the proposal to set the maximum prison term for an indictable offence at 2 years rather than 5 years?

Agree. Currently, some offences carry a fine rather than a prison sentence therefore the selection of 2 years is already a major increase. For offences that can receive a prison sentence under the current regime, the sentence is 2 years, therefore this should be maintained and not increased.

Proposal 14 – Public Register

Q27. Do you agree with the proposal to adopt the approach to maintaining the public register when we have moved into the Environmental Permitting Regulations?

Agree. However, there will need to be the ability to have paper copies, as many operators (current licence holders) may not be digitally literate or have reliable internet access. The CLA understands that any administrative burden for this service will fall on the regulator. The CLA is supportive of commercially sensitive information being withheld.

Proposal 15 – Advertising and public participation

Q28. Do you agree with the proposal to move to online digital advertising for abstraction and impounding licence applications, except for High Public Interest applications which will require local newspaper advertisement as well as online advertising?

Agree that HPI applications should be in local newspapers, as not everyone is digitally literate/has reliable internet access.

Q29. Do you agree with the proposal to dispense with public participation (advertising) where there would no appreciable adverse effect on the environment and other abstraction rights?

Agree. Advertising can present an additional administrative burden on applicants.

Q30. Do you agree with the proposal to move the current duty under legislation to consult with key organisations to guidance in the form of an agreement or memorandum with the key organisations?

No opinion.

Proposal 16 – Vesting and Bankruptcy

Q31. Do you agree with the proposal to adopt the Environmental Permitting Regulations provisions for vesting and the 6-month notification period?

The CLA is supportive of the consideration given to permits which have vested in the 15 months prior to the date of implementation of the EPR and understands the desire to align with existing EPR regimes and create a single regulatory framework. However, it can typically take 6-12 months to settle an estate, or up to two years where the person has not made a will. Therefore, for situations where the operator is the landowner, and likely to have others undertaking the regulated activity on their behalf, **the 6-month notification period proposed is too short**. The existing 15 months is much more closely aligned to the expected probate period.

Proposal 17 – Climate change adaptation

Q32. Do you agree with the proposal to include climate change adaptation measures within the Environment Management System? If not, why not?

The CLA is supportive of the provision under the EPR to help industry understand and manage climate change and agrees that the inclusion of climate change adaptation measures within the EMS is more appropriate than requiring a risk screening to be completed.

Q33. What, if any, further conditions would you propose to be included in a permit to help mitigate climate change?

n/a.

Proposal 18 – Protected rights, derogation and lawful use

Q34. Do you agree with the proposal to carry across into the Environmental Permitting Regulations the duty for the Environment Agency not to derogate from protected rights when considering a permit application or variation?

The CLA **strongly agrees** that the duty for the EA not to derogate from protected rights when considering a permit application or variation should remain, along with the ability for the holder of the protected right to claim compensation should this be derogated from.

Q35. Do you agree with the proposal to include within the Environmental Permitting Regulations the duty for the Environment Agency to have regard to lawful uses when considering a permit application or variation?

Agree.

Proposal 19 – Applying for a permit

Q36. Do you agree with the proposal to carry across into the Environmental Permitting Regulations the ability for the Environment Agency to serve a notice on an applicant, and the ability for the applicant to appeal, in circumstances where the applicant has applied for an activity and the Environment Agency considers they have applied for the wrong type of activity?

Agree.

Proposal 20 – Permit applications by the Environment Agency

Q37. Do you agree with the proposal to adopt the Environmental Permitting Regulations approach to permit applications by the Environment Agency?

n/a.

Proposal 21 – Canal & River Trust Provisions

Q38. Do you agree with the proposal to retain the existing provisions concerning the CRT when abstraction and impounding moves into the Environmental Permitting Regulations?

n/a.

Proposal 22 – Civil Remedies for loss or damage due to water abstraction
Proposal 23 – Fishing rights and Ecclesiastical property

Q39. Do you agree with the proposal to repeal the relevant sections of legislation relating to fishing rights and not to take them into the Environmental Permitting Regulations?

Given that these sections of legislation have not been used in the last 30 years the CLA does not have an opinion on this proposal.

Proposal 24 – Compensation

Q40. Do you agree with our proposal to issue an Environmental Permitting Regulations permit to replace a transitional permit as a result of certain operator-initiated variations and transfers/part transfers?

The CLA **strongly disagrees** with the proposed loss of compensation rights. Permanent abstraction licences are business assets and property rights, adding value to land and providing options for business growth and diversification. Removal of these licences has significant impacts on rural businesses and food production. As such they should not be changed or revoked without compensation. Licence holders have been paying compensation charges for many years and it is unclear where this money sits and how it is being used. It is unfair that those who have paid this charge in good faith should not be able to access the fund. Compensation rights are being dealt with under the Environment Act, therefore we feel these should not be prematurely revoked as part of the move into the EPR.

We are supportive of existing licences that will transition into the Environmental Permitting Regulations and become permits retaining their current right to claim compensation on a transitional basis.

The CLA is supportive of the idea that where there is a variation with no environmental impact, compensation rights will not be removed. This is important, as if licence holders are concerned that they will lose compensation rights, they may choose not to enter a variation which may have

a positive environmental effect, for example, changing a spray irrigation licence to include trickle, which would improve water efficiency. The CLA is concerned that some changes with positive environmental impacts (such as moving from spray to trickle irrigation) may be determined a major variation and be prohibitively expensive and cause the transitional permit to become an EPR permit. This would prevent innovation and work against the overall regulator aim to protect and enhance the environment. As such, changes of use without changes to volume should be treated as minor variations.

Similarly, if a borehole collapses and has to be moved to facilitate the continued operation of the permit, the replacement borehole should not require an amendment to the (transitional) permit. Depending on the ground conditions, the location of the replacement borehole may not be especially close to the original, but it will be on the same site and source of supply as the failed one.

It will be key to expand the list of variations which retain transitional rights.

Similarly, the transfer or partial transfer of a transitional permit should not cause an EPR permit to be issued. These should remain transitional permit(s) which retain the transitional rights and are not subject to the additional conditions of EPR permits.

Proposal 25 – Discharge of functions
Proposal 26 – Civil liability and defences

Q41. Do you agree with our proposal to repeal the liability defences under sections 48 and 70 and not carry them across to the Environmental Permitting Regulations?

n/a

For further information please contact:

Alice Green
Land Use Policy Advisor (Climate and Water)
CLA, 16 Belgrave Square
London SW1X 8PQ

Tel: 020 7235 0511
Fax: 020 7235 4696
Email: alice.green@cla.org.uk
www.cla.org.uk